

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARMEN ACOSTA,

07 CIV 6326 (PAC) (FM)

Plaintiff,

-against-

AMERICAN SALES & MANAGEMENT ORGANIZATION
CORPORATION and AMERICAN AIRLINES, INC.,

ANSWER WITH
JURY DEMAND
AND CROSS-CLAIM

Defendants.
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Defendant, AMERICAN AIRLINES, INC., by and through their attorneys,

RUTHERFORD & CHRISTIE, LLP, as and for its Answer to the Verified Complaint of
plaintiff's herein, respectfully sets forth as follows, upon information and belief:

FIRST: Denies knowledge or information sufficient to form a belief as to the truth or
accuracy of the allegations contained in the paragraph designated "1" in the plaintiff's Verified
Complaint.

SECOND: Denies the truth of the allegations contained in the paragraph designated
as "2" of the plaintiff's Verified Complaint.

THIRD: Denies the truth of the allegations contained in the paragraph designated
as "3" of the plaintiff's Verified Complaint.

FOURTH: Denies the truth of the allegations contained in the paragraph designated as "4" of the plaintiff's Verified Complaint.

FIFTH: Denies the truth of the allegations contained in the paragraph designated as "5" of the plaintiff's Verified Complaint.

SIXTH: Denies each of the allegations contained in the paragraph designated as "6" of the plaintiff's Verified Complaint, but admits that AMERICAN AIRLINES, INC. is a Delaware corporation with its principal place of business in Texas.

SEVENTH: Denies each of the allegations contained in the paragraph designated as "7" of the plaintiff's Verified Complaint, but admits that AMERICAN AIRLINES, INC. is a Delaware corporation with its principal place of business in Texas.

EIGHTH: Denies each of the allegations contained in the paragraph designated as "8" of the plaintiff's Verified Complaint, but admits that AMERICAN AIRLINES, INC. is a Delaware corporation with its principal place of business in Texas.

NINTH: Denies each of the allegations contained in the paragraph designated as "9" of the plaintiff's Verified Complaint, but admits that AMERICAN AIRLINES, INC. is a Delaware corporation with its principal place of business in Texas.

TENTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated "10" in the plaintiff's Verified Complaint and refers all questions of law to this Honorable Court.

ELEVENTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated "11" in the plaintiff's Verified Complaint.

AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF CARMEN ACOSTA

TWELFTH: Defendant repeats, reiterates and realleges each and every response to the plaintiff's Verified Complaint contained in paragraphs "1" through "11" above with the same force and effect as if set forth herein at length.

THIRTEENTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated "13" in the plaintiff's Verified Complaint.

FOURTEENTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated "14" in the plaintiff's Verified Complaint and refers all questions of law to this Honorable Court.

FIFTEENTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “15” in the plaintiff’s Verified Complaint and refers all questions of law to this Honorable Court.

SIXTEENTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “16” in the plaintiff’s Verified Complaint and refers all questions of law to this Honorable Court.

SEVENTEENTH: Denies each and every allegation contained in the paragraphs designated as “17” of the plaintiff’s Verified Complaint.

EIGHTEENTH: Denies each and every allegation contained in the paragraphs designated as “18” of the plaintiff’s Verified Complaint.

NINETEENTH: Denies each and every allegation contained in the paragraphs designated as “19” of the plaintiff’s Verified Complaint.

TWENTIETH: Denies each and every allegation contained in the paragraphs designated as “20” of the plaintiff’s Verified Complaint.

TWENTY-FIRST: Denies each and every allegation contained in the paragraphs designated as “21” of the plaintiff’s Verified Complaint.

TWENTY-SECOND: Denies each and every allegation contained in the paragraphs designated as "22" of the plaintiff's Verified Complaint.

TWENTY-THIRD: Denies each and every allegation contained in the paragraphs designated as "23" of the plaintiff's Verified Complaint.

TWENTY-FOURTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated "24" in the plaintiff's Verified Complaint and refers all questions of law to this Honorable Court.

TWENTY-FIFTH: Denies each and every allegation contained in the paragraphs designated as "25" of the plaintiff's Verified Complaint.

AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF CARMEN ACOSTA

TWENTY-SIXTH: Defendant repeats, reiterates and realleges each and every response to the plaintiff's Verified Complaint contained in paragraphs "1" through "25" above with the same force and effect as if set forth herein at length.

TWENTY-SEVENTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated "27" in the plaintiff's Verified Complaint.

TWENTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “28” in the plaintiff’s Verified Complaint and refers all questions of law to this Honorable Court.

TWENTY-NINTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “29” in the plaintiff’s Verified Complaint.

THIRTIETH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “30” in the plaintiff’s Verified Complaint.

THIRTY-FIRST: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “31” in the plaintiff’s Verified Complaint.

THIRTY-SECOND: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “32” in the plaintiff’s Verified Complaint.

THIRTY-THIRD: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “33” in the plaintiff’s Verified Complaint.

THIRTY-FOURTH: Denies each and every allegation contained in the paragraphs designated as “34” of the plaintiff’s Verified Complaint.

THIRTY-FIFTH: Denies each and every allegation contained in the paragraphs designated as “35” of the plaintiff’s Verified Complaint.

THIRTY-SIXTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “36” in the plaintiff’s Verified Complaint.

THIRTY-SEVENTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “37” in the plaintiff’s Verified Complaint and refers all questions of law to this Honorable Court.

THIRTY-EIGHTH: Denies each and every allegation contained in the paragraphs designated as “38” of the plaintiff’s Verified Complaint.

**AS AND FOR A FIRST SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-NINTH: Upon information and belief, that whatever damages the plaintiff may have sustained at the time and place mentioned in the Verified Complaint were caused in whole or in part by the culpable conduct of said plaintiff. The amount of damages recovered, if any, shall therefore be diminished in the proportion to which said culpable conduct, attributable to Plaintiff, bears to the culpable conduct which caused said damages.

**AS AND FOR A SECOND SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTIETH: If the injuries and damages were sustained by the plaintiff at the time and place and in the manner alleged in the Complaint, such damages and injuries are attributable, in whole or in part, to the culpable conduct of third parties, and if any damages are recoverable against the defendant, the amount of such damages shall be diminished in the proportion that the culpable conduct attributable to third parties bears to the culpable conduct which caused the damages pursuant to CPLR §1601.

**AS AND FOR A THIRD SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-FIRST: That the Complaint herein fails to state a cause of action upon which relief may be granted against the defendant.

**AS AND FOR A FOURTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-SECOND: The answering defendant, its agents, servants and/or employees did not take part in or direct any of the acts complained of which resulted in plaintiff's alleged damages.

**AS AND FOR A FIFTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-THIRD: Plaintiff's damages were caused and brought about by an intervening and superseding cause and were not caused by the defendant, or by a person or entity for whom the defendant is responsible.

**AS AND FOR A SIXTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-FOURTH: The defendant's liability, if any, to the plaintiffs is limited under Article 16 of the Civil Practice Law & Rules of the State of New York.

**AS AND FOR A SEVENTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-FIFTH: Upon information and belief, plaintiff's economic loss, if any, as specified in §4545 of the CPLR, was or will be replaced or indemnified, in whole or in part, from collateral sources, and the answering defendant is entitled to have the Court consider the same in determining such special damages as provided in §4545 of CPLR.

**AS AND FOR AN EIGHTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-SIXTH: The answering defendant, pursuant to §1412 of the CPLR, alleges upon information and belief that if the plaintiff sustained any damages at the time and place alleged in the Complaint, such damages were the result of the culpable conduct of the plaintiff because of the plaintiff's negligence or assumption of risk. Should it be found, however, that defendant is liable to the plaintiff herein, any liability being specifically denied, then the defendant demands that any damages that are found to be apportioned among the respective parties according to the degree of responsibility each is found to have in the occurrence, in proportion to the entire measure of responsibility for the occurrence.

**AS AND FOR A NINTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-SEVENTH: Any injuries or damages claimed were caused, in whole or in part, by the negligence or other culpable conduct of third parties over which the answering defendant had no control or right to exercise such control.

**AS AND FOR A TENTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-EIGHTH: Pursuant to its tariffs on file with the Department of Transportation of the United States, AMERICAN AIRLINES, INC.'s liability, if any, is partial only and limited.

**AS AND FOR AN ELEVENTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-NINTH: The liability of defendant, AMERICAN AIRLINES, INC., if any, with respect to the injuries allegedly sustained by plaintiff, is limited in accordance with AMERICAN AIRLINES, INC.'s Conditions of Carriage and Contract of Carriage and tariffs.

**AS AND FOR A TWELFTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

FIFTIETH: The Court does not have jurisdiction over the answering defendant based upon improper service of process.

**AS AND FOR A THIRTEENTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

FIFTY-FIRST: The defendant took all necessary measures to avoid the occurrence alleged in plaintiff's Complaint.

AS AND FOR A FIRST CROSS-CLAIM AGAINST DEFENDANT AMERICAN SALES & MANAGEMENT ORGANIZATION CORPORATION, THE ANSWERING DEFENDANT HEREBY ALLEGES THE FOLLOWING:

FIFTY-SECOND: That if the plaintiff was caused to sustain damages at the time and place set forth in the plaintiffs' complaint through any carelessness, recklessness and/or negligence other than the plaintiff's own, such damages were sustained wholly due to the primary and active carelessness, recklessness and negligent acts omissions by defendant American Sales & Management Organization Corporation, their agents, servants and/or employees with the negligence of the answering defendant, if any, being secondary, derivative and by operation of law.

FIFTY-THIRD: Further, if plaintiff should recover judgment against the answering defendant, then defendant American Sales & Management Organization Corporation shall be liable to indemnify the answering defendant in whole for the amount of any recovery obtained herein by the plaintiff against the answering defendant as the Court or Jury may direct.

FIFTY-FOURTH: That by reason of this action, said answering defendant has/have been and will be put to costs and expenses including attorneys' fees, and the answering defendant demands judgment over and against defendant American Sales & Management Organization Corporation for the amount of any judgment which may be obtained herein by the plaintiff against the answering defendant or in such amount as the Court or Jury may direct together with the costs and disbursements of the action.

AS AND FOR A SECOND CROSS-CLAIM AGAINST DEFENDANT AMERICAN SALES & MANAGEMENT ORGANIZATION CORPORATION, DEFENDANT AMERICAN AIRLINES, INC., ALLEGES

FIFTY-FIFTH: Upon information and belief, that if and in the event Plaintiff(s) sustained the injuries and damages complained of, such injuries and damages were caused in

whole or in part, by reason of the negligence, carelessness, recklessness, violations of law and strict liability of the defendant American Sales & Management Organization Corporation, without any wrongdoing on the part of the answering defendant contributing thereto.

FIFTY-SIXTH: By reason of the foregoing, in the event that any judgment or verdict is recovered against the answering defendant, answering defendant is entitled to contribution from and to judgment over and against defendant American Safety & Management Organization Corporation equal to the proportionate share of responsibility as is adjudged between all the defendants herein.

DEMAND FOR A JURY TRIAL

FIFTY-SEVENTH: Defendant demands a trial by jury as to any and all issues raised in the Complaint and this Answer which are triable before a jury.

WHEREFORE, defendant, AMERICAN AIRLINES, INC., demands judgment dismissing the Complaint herein, together with costs and disbursements incurred in this action.

Dated: New York, New York
July 13, 2007

Respectfully submitted,

RUTHERFORD & CHRISTIE, LLP

By: S/ David S. Rutherford

David S. Rutherford (DR 8564)
Attorneys for Defendants,
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TO: MARSCHHAUSEN & FITZPATRICK, P.C.
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MARTINEZ & RITORTO, P.C.
Attorneys for Co-Defendant
AMERICAN SALES & MANAGEMENT
ORGANIZATION CORPORATION (ASMO)
67 Wall Street
New York, New York 10005
(212) 248-0800
Attn: Louis R. Martinez, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the **ANSWER WITH JURY DEMAND AND NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION**, along with all exhibits attached thereto, were served regular mail to MARSCHHAUSEN & FITZPATRICK, P.C., 500 Old Country Road, Suite 103, Garden City, New York 11530, Attention: Dirk Marschhausen, Esq. and MARTINEZ & RITORTO, P.C., 67 Wall Street, New York, New York 10005, Attn: Louis R. Martinez, Esq., on the 13th day of July, 2007.

Respectfully submitted,

RUTHERFORD & CHRISTIE, LLP

By: S/ David S. Rutherford

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